

TAM:DBS:mel:2000V00753

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

M. ASH-SHARIEF AL'ASKARI,	:	
Plaintiff	:	Civil No. 1:CV-00-1449
	:	(Caldwell, J.)
v.	:	(Smyser, M.J.)
	:	
KATHLEEN HAWKES, et al., ,	:	Electronically Filed
Defendants	:	

DEFENDANT'S MOTION FOR CONTINUATION OF EVIDENTIARY HEARING

Defendant Douglas Goldring, through counsel, moves the Court for a continuance of the evidentiary hearing scheduled for March 22, 2004. In support of his motion, defendant avers the following:

1. Plaintiff, M. Ash-Sharief Al'Askari, is a former inmate incarcerated at the Allenwood Federal Correctional Institution in White Deer, Pennsylvania.

2. On August 14, 2000, Al'Askari filed a complaint pursuant to Bivens v. Six Unknown Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971), against four BOP employees alleging violations of his due process rights and a denial of access to the courts.

3. On April 21, 2001, a motion to dismiss and for summary judgment was granted by the Court for plaintiff's failure to

exhaust his administrative remedies. An appeal to the Third Circuit Court of Appeals followed.

4. In an unreported opinion issued on January 13, 2003, the Third Circuit affirmed the District Court's order to the extent it dismissed the complaint against defendants Hawk-Sawyer, Zimany, and Hursh.

5. As to defendant Goldring, the Third Circuit agreed with Al'Askari "that a hearing is required to resolve a factual dispute concerning the exhaustion of administrative remedies with respect to his access to the courts claim." See Al'Askari v. Hawkes, No. 01-2167, slip op., at 7 (3d Cir., Jan. 13, 2003). Thus, the District Court's order was vacated to the extent it dismissed the complaint against defendant Goldring on the access to the courts claim.

6. On April 11, 2003, the case was remanded to the Magistrate Judge for further proceedings on this issue. A case management order was issued on April 29, 2003, setting forth the deadlines for discovery, discovery-related motions, dispositive motions, and consent. The deadline for filing dispositive motions and briefs was January 15, 2004.

7. By motion filed January 20, 2004, defendant requested the Court to conduct an evidentiary hearing to resolve the factual dispute in order to determine whether Al'Askari is

entitled to have his access to the courts claim heard on the merits.

8. The motion for evidentiary hearing was granted on March 1, 2004. The hearing is scheduled for March 22, 2004, at 1:30 p.m. in Harrisburg.

9. Unfortunately, both agency counsel for the Bureau of Prisons and the paralegal from the United States Attorney's Office assigned to this case will be in trial in Scranton, before the Honorable James M. Munley, commencing with jury selection on March 22, 2004, in the case of Feurtado v. Sha, No. 3:CV-02-0432. The trial is expected to last conclude on March 24, 2004.

10. Due to the unavailability of these individuals on March 22, 2004, counsel for defendant requests that the hearing be rescheduled.

11. Counsel certifies that, in an effort to comply with Local Rule 7.1, we have sent plaintiff a letter asking him to inform the Court whether he concurs in defendant's motion. A copy of the letter is attached for the Court's convenience.

WHEREFORE, for the reasons stated above, defendant Goldring requests a continuance of the evidentiary hearing.

Respectfully submitted,

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Dated: March 9, 2004

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee in the Office of the United States Attorney for the Middle District of Pennsylvania and is a person of such age and discretion to be competent to serve papers.

That on March 9, 2004, she served a copy of the attached

DEFENDANT'S MOTION FOR CONTINUATION OF EVIDENTIARY HEARING

by placing said copy in a postpaid envelope addressed to the person(s) hereinafter named, at the place and address stated below, which is the last known address, and by depositing said envelope and contents in the United States Mail at Williamsport, Pennsylvania.

Addressee:

M. Ash-Sharief Al'Askari
5737 N. 12th Street
Philadelphia, PA 19141

s/ Michele E. Lincalis
MICHELE E. LINCALIS
Paralegal Specialist